

KARL N. FLAGG
MAYOR - COMMISSIONER

MARY LAWSON BROWN
VICE MAYOR - COMMISSIONER

ALLEGRA KITCHENS
COMMISSIONER

VERNON MYERS
COMMISSIONER

JAMES NORWOOD, JR.
COMMISSIONER



Regular meeting 2nd and 4th Thursdays each month at 6:00 p.m.

ELWIN C. "WOODY" BOYNTON, JR.
CITY MANAGER

BETSY JORDAN DRIGGERS
CITY CLERK

RUBY M. WILLIAMS
FINANCE DIRECTOR

GARY S. GETCHELL
CHIEF OF POLICE

MICHAEL LAMBERT
CHIEF FIRE DEPT.

DONALD E. HOLMES
CITY ATTORNEY

MINUTES CITY OF PALATKA October 29, 2009

Proceedings of a regular meeting of the City Commission of the City of Palatka, Florida, held on the 29th day of October, 2009.

PRESENT: Mayor Karl N. Flagg
Commissioner Mary Lawson Brown
Commissioner Allegra Kitchens
Commissioner Vernon Myers, Jr.
Commissioner James Norwood, Jr.

Also present: City Manager Elwin C. "Woody" Boynton, Jr.; Jay Asbury, Special Legal Counsel to the Commission; City Clerk Betsy Jordan Driggers, Finance Director Matt Reynolds; Assistant Police Chief James Griffith.

CALL TO ORDER – Mayor Flagg called the meeting to order at 6:00 p.m. and read the following meeting call, dated October 26, 2009:

TO MESSRS: MARY LAWSON BROWN, ALLEGRA KITCHENS, VERNON MYERS
AND JAMES NORWOOD, JR.:

You are hereby notified that a special meeting of the Palatka City Commission is called to be held on October 29, 2009, at the regular meeting place of the Palatka City Commission at City Hall, 201 N. 2nd Street, Palatka, Florida, to commence at 6:00 p.m.

The purpose of the meeting is to hear a continuance of the following Public Hearing from the Regular October 22, 2009 Meeting's Orders of the Day:

PUBLIC HEARING - ORDINANCE - Planning Board Case #PB 08-29 - Request to close N.16th Street between St. Johns Avenue and Reid Street - St. Johns Automotive Real Estate, LLC; Juli Holmes, Agent; 1st Reading – Planning Board Recommendation to Deny – **CONTINUED FROM OCTOBER 22, 2009**

/s/ Karl N. Flagg
Karl N. Flagg, MAYOR

The following commissioners acknowledged receipt of a copy of the foregoing notice of a special meeting on the 26th day of October, 2009.

/s/ Mary Lawson Brown

/s/ Vernon Myers

COMMISSIONER

/s/ James Norwood, Jr.

COMMISSIONER

INVOCATION – Commissioner Norwood

COMMISSIONER

/s/ Allegra Kitchens

COMMISSIONER

PLEDGE OF ALLEGIANCE – Commissioner Kitchens

Mayor Flagg directed the Clerk to re-read a ordinance entitled AN ORDINANCE OF THE CITY OF PALATKA, FLORIDA, CLOSING, VACATING AND ABANDONING THAT PORTION OF NORTH 16TH STREET LOCATED IN MERWIN'S SUBDIVISION LYING WEST OF BLOCK 295 AND EAST OF BLOCK 303 AND RESERVING REQUIRED UTILITY EASEMENTS, WITHIN THE CITY OF PALATKA, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. Mayor Flagg noted that at the 10/22/09 meeting Commissioner Norwood moved to pass the ordinance on first reading as read. Commissioner Myers seconded the motion. He stated the Commission will take up where it left off, in commission deliberation, as the public input portion of the Public Hearing was closed on October 22, 2009.

Mayor Flagg introduced Jay Asbury, Esquire, as special counsel to the Commission and acting interim city attorney, as Mr. Holmes, the City's attorney, has recused himself from these proceedings due to his relationship with Beck Automotive.

Commissioner Kitchens said she e-mailed her legal questions to Mr. Asbury on Tuesday for an opinion. She noted that Ms. Holmes, agent for the petitioner, stated that if the Beck dealership ever ceased to exist that the Street would revert to the City and it would be reconstructed to pre-closing status. She asked if the dealership had to declare federal bankruptcy, would the bankruptcy court have the power to override the deed and keep the street? Also, if the Federal Government foreclosed on GM, would they be able to override the deed? Mr. Asbury said, to answer the bankruptcy court question, which he double-checked the Bankruptcy Council, the Bankruptcy court would be bound to any agreements. As to what would happen if the federal government were to take over GM, no one knows as this has never happened before. He has not heard of any cases where the government is stepping into any dealerships. He doesn't see this happening in Palatka, but no one knows what will happen. Commissioner Kitchens said the City Manger could close the street without abandoning it and retain title to the street. She asked if the City will retain title to the Street if this happens. Mr. Asbury said they could really get into a "title seminar" tonight, but the answer to the question is that the City does not have title to the street now. The legal theory of platting and subdivisions is that when the original developer platted the neighborhood and set down the street, the government approved the plat, which was then dedicated to the public. The title remains with the developer, but it encumbers those areas with the verbiage put on them, such as street, park, boat ramp, etc. As the developer sells out, the people that step into his "shoes" on those abutting properties have the underlying title, although it's not worth anything. Under the legal theory of vacation, upon the city vacating it, the title moves from the abutting titles and the abutting owners pick up the property and the property lines come together. The City does not own it, but controls it and holds the right to use it as a street in trust for the public. It is not a burden on the govt. to close roads; they have almost absolute complete discretion to close any roadway they want, and the only way they've gotten into jams by doing that is by doing it arbitrarily. People who don't own property along those abutting lines don't have a lot to be hurt about. He cited one case in particular, used in teaching seminars, is an Escambia county case circa 1958, where that County closed a long road area and some folks didn't like it. Eighty-one citizens brought a lawsuit challenging the abandonment, and some proved they had to travel 4 – 8 miles further due to the closure. The court said since they didn't live on that road they weren't damaged any more than the

general public was. The Commission has the ability to act justly in the best interest of the citizens and if they do that this is not an issue.

Commissioner Kitchens said the dealership needs title to the street to own the property, and asked if the City closes the street without vacating it, if the title goes to the property owner. Mr. Asbury said the title does not go to the abutting property owners without vacating it. Commissioner Kitchens asked if they close it without legally vacating if the property will still belong to the City. Mr. Asbury said he feels that is not a good idea, as if Palatka closes it off but lets someone else use it, the City is still liable for whatever happens upon it, without having any control over what happens upon it. Since the underlying ownership is with the abutting owners, and the citizens have the right to use the land as a street, maybe through their ownership that may meet the GM test, but he has no clue as to what GM wants. Commissioner Kitchens said she discussed public disclosure regarding contact with the petitioner prior to the meeting. Mr. Asbury said he does not see any conflict here; he believes if their City Attorney were sitting here and a conflict was developing he would let them know. Commissioner Kitchens said she met with Mr. Sloan and other citizens asked if she should publicly disclose that. Mr. Asbury said it certainly doesn't hurt, but they are not sitting in a quasi-judicial procedure; this is city business.

Commissioner Brown said she asked the two parties to sit down and negotiate this through and come to a meeting of the minds. She'd like to know if that occurred. She has spoken to both sides. The more people they talk to, the more ideas they get. She also spoke with the property owner of the home in that block.

Breck Sloan, 2601 Fairway Drive, applicant, said they met over four or five issues, and he believes they have come to an agreement on all but one of those. They worked on that until about 30 minutes ago and will continue to work on that, depending upon the results of this meeting. Both sides are cooperating.

Jason Brown, 212 Mimosa, concurred and said they need some additional time for a few issues, but they are all good to go on this. They still oppose the closing of 16th Street but are negotiating.

Commissioner Myers said his questions had been answered. Both sides have valid considerations and he appreciates those as a business owner. As commissioners they act in the best interest of the citizens. He's made many communications on this with both sides. The major concerns are the economic ramifications and jobs, and the economic vitality of the area. For citizens to prosper they need to preserve jobs. He has much respect and admiration for both sides and thanks them for their positions.

Commissioner Norwood concurred and thanked the parties for coming together to mediate. They are charged with making difficult decisions. He has weighed the benefit of having the dealership, and considered FDOT's plans to close some streets at some point in order to move traffic along Hwy 17 more quickly. They need to ensure access to the utilities on 16th Street. He wants to be sure that everyone has had an opportunity to voice their concerns between the Beck dealership and St. Johns Chevrolet.

Mayor Flagg said he wants them all to enjoy a win-win situation. He wants to protect city infrastructure, neighborhood integrity, the interests of all concern, jobs, safety of community and welfare, municipal vitality, and consider reasonable accommodations. They need to minimize adverse existing issues and anticipate future environmental issues, economic issues, and minimize impact of services and infill needs within the City's core. They need to maximize property within the inner city.

Mayor Flagg said the ordinance has been read, motioned and seconded. He'd like read into the record the difference in the original proposed ordinance vs. an alternative ordinance.

Mr. Asbury said he has not reviewed the existing ordinance. Mayor Flagg noted the new ordinance contains the reverter clause. Instead of having to adjust the proposed ordinance, the most precise way would be to withdraw the second and motion, and deliberate a new motion. Commissioner Norwood withdrew his motion. Commissioner Myers withdrew his second.

Mr. Asbury said the proposed ordinance can be changed if it's not changed in substance, such as misspelled words, but this ordinance does the same thing as the other ordinance. It vacates the street. It goes on to say that all owners or lien holders of the landholders that abut the street that takes any interest will have 30 days from the date of passage to give them an acceptable and reportable form of a reverter restriction with reverter language that says if any of the property described in Schedule C, which is the whole property, stops being used as a new car sales outlet, then the reverter kicks in and Palatka gets the strip back 'in fee simple" which means they can do anything they want with it. Once this is passed, there will be a time frame within which people need to get documents signed, and he didn't want people to run out of time.

Mr. Asbury said Section 1 of the ordinance vacates the Street and retains any easements, rights and easements of record. He may even tweak this a little more and address the stormwater situation. They don't want to give away any rights the City may need to push some water through there. Section 2 talks about compliance on the restrictive covenant, which will be recorded, and says that through any breach of the agreement, i.e. not using it as a new car outlet, the property will revert to the City of Palatka. Section 3 is just a safety clause, giving authority to the City Manager and City Attorney, stating it will bear the City Managers signature, and authorizes the Mayor and City Manger to sign the documents. Section 4 addresses the legislative intent, stating the intent is not just to vacate a road, but to set two things in motion: One is to vacate the street, and the second is that the property is to be used in a particular way, and if those don't happen, this ordinance will no longer be in effect. This is to ensure the road way will be used as it was intended to be used according to the legislative intent. The effective date is 35 days from the adoption to give everyone time to effectuate it. If everything is done by the second reading, they can make it effective immediately.

Mayor Flagg said under Item 2, Section 2, the commission can decide what is reasonable. He believes 180 days is reasonable. Mr. Asbury said if the place should cease to be used to sell new cars for 180 days it will revert. Mayor Flagg said as to the time of enactment, they have set a standard of ordinances taking effect upon adoption. Mr. Asbury said this is the time frame he felt was reasonable in order to the paperwork approved by Mr. Boynton and Mr. Holmes. If people can handle their responsibilities within two weeks, these deadlines can be changed. Mr. Boynton said many things need to be done and they have the holidays to contend with. If it's done by November 12 they can change it to 'effective immediately" and record it accordingly. They will work diligently to get everything taken care of by November 12. Mayor Flagg said he was always taught that you can't change an ordinance on 2nd reading and asked if this constitutes such a change. Per discussion, there was commission concurrence that there is no problem with the language as is. Commissioner Kitchens asked if, for some reason, something happened and the reverter deed wasn't signed, if the ordinance would be legal and stand. Mr. Boynton said then he and the Mayor wouldn't sign it if the reverter deed is not signed. Mr. Asbury said two things have to happen. One is they take the first step and agree to vacate the road. The next thing is for them to comply and satisfy the City Manager and City Attorney. He

would assume that if things don't happen the way they are supposed to, that the ordinance will be eliminated and not passed. It's a self-acting deal.

The Clerk then read the new ordinance, entitled AN ORDINANCE OF THE CITY OF PALATKA, FLORIDA, VACATING ALL OF THAT PORTION OF 16TH STREET WHICH LIES BETWEEN ST. JOHNS AVENUE AND REID STREET (HIGHWAY 17) IN POALATKA, FLORIDA; AUTHORIZING EXECUTION OF DOCUMENTS; REQUIRING RESTRICTIVE COVENANTS WITH REVERTER CLAUSE; PROVIDING FOR THE TIME LIMITATION FOR COMPLIANCE; AND PROVIDING FOR AN EFFECTIVE DATE. Commissioner Norwood moved to pass the ordinance on first reading with Section II specifying 180 days for the reverter clause. Commissioner Myers seconded the motion. Commissioner Kitchens said she is pleased with negotiations between the two businesses and doesn't think closing this street will cause concern. She would rather have seen a traffic study done on Sunday and then maybe one other day of the week for more than just four hours. Several citizens have called and expressed their disapproval of the closing of this street. She wants to do what's best for the community and she wants the people to be heard. Commissioner Brown said she feels that they are servants of the people and are put here to do what's best. She called FLC and received legal information that she passed on. She considered the jobs both these businesses provide to people in the community. When big business steps on little business it causes stress. When she was young there was nothing but homes along Reid Street from 19th Street to the train tracks, but now it is mostly small businesses. They need to have a vision. She wants her children and grandchildren to have an opportunity and to live and work here. She gave a lot of thought to this She doesn't want to see any more businesses move away from the core of downtown. There being no further discussion a roll-call vote was taken, with the following results: Commissioners Brown, Myers, Norwood and Mayor Flagg, yes; Commissioner Kitchens, No. The ordinance was declared passed on first reading by majority vote. It was noted second reading is still scheduled for November 12.

There being no further business to discuss, the meeting was adjourned at 6:50 p.m. upon a motion by Commissioner Kitchens, seconded by Commissioner Brown.

ANY PERSON WISHING TO APPEAL ANY DECISION MADE BY THE CITY COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE MAY NEED TO INSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. FS 286.105

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